



Understanding the Legal Challenges to Executive Action

On June 23, 2016, the U.S. Supreme Court issued a 4-4 decision in *United States v. Texas*, the case challenging expanded Deferred Action for Childhood Arrivals (DACA) and Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA).¹ This means that a preliminary injunction temporarily halting the implementation of these initiatives stands. This ruling does not impact the original DACA program launched in 2012. However, it does have a profound and disappointing impact on the millions of would-be eligible immigrants whose lives remain in limbo after the Court's ruling.

This fact sheet provides an overview of the lawsuits that have challenged expanded DACA and DAPA. It explains the legal claims, the court decisions, and the process.

Background

On November 20 and 21, 2014, President Barack Obama announced a series of administrative reforms of immigration policy, collectively called the Immigration Accountability Executive Action.² The centerpiece of these reforms is an expansion of the current Deferred Action for Childhood Arrivals (DACA) initiative and the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) initiative for the parents of U.S. citizens and lawful permanent residents who meet certain criteria.³ Together, these initiatives could provide as many as 5 million immigrants with temporary relief from deportation. Moreover, DAPA and expanded DACA would not only keep families united, but also increase U.S. gross domestic product, increase tax revenue, and raise wages.⁴

Like the original DACA initiative, both expanded DACA and DAPA derive from the executive branch's authority to exercise discretion in the prosecution and enforcement of immigration cases.⁵ In both instances, the President authorized the Department of Homeland Security (DHS) to defer for three years the deportation of qualified individuals who pose no threat to the United States in the hope that Congress would finally undertake more permanent, comprehensive immigration reform.

Within hours of the announcement, notorious Maricopa County, Arizona Sheriff Joe Arpaio challenged the President's plan to defer deportations in a Washington, D.C., federal court, in a case named *Arpaio v. Obama*.⁶ Shortly thereafter, representatives of 17 states filed a similar case, *Texas v. United States*, in a Brownsville, Texas, federal court,⁷ with 9 other states later joining the lawsuit.⁸ On the other hand, a broad spectrum of supporters—including 15 states and the District of Columbia⁹—filed "friend-of-the-court" briefs supporting the President's plan.

The U.S. Government opposed both lawsuits on the grounds that the President's actions were a lawful use of prosecutorial discretion, and that the plaintiffs lacked "standing" to bring their cases, since plaintiffs were not harmed.¹⁰ Both arguments are supported by a wide range of law professors and experts.¹¹

The Washington, D.C. federal court promptly dismissed Sheriff Arpaio's lawsuit.¹² That decision was upheld unanimously by a three-judge panel of the D.C. Circuit Court of Appeals on August 14, 2015.¹³ Sheriff Arpaio asked the Supreme Court to review the case, but on January 19, 2016, the Supreme Court denied that request.¹⁴

Separately, the Texas federal court preliminarily blocked, on procedural grounds, the President's DAPA and expanded DACA initiatives (but not original DACA) on February 16, 2015.¹⁵ The Department of Justice appealed this order,¹⁶ and arguments were heard on July 10, 2015. On November 9, 2015, a divided panel of the Fifth Circuit Court of Appeals upheld the lower court's ruling in a 2-1 decision.¹⁷ The following day, the Department of Justice announced its intention to seek Supreme Court review of the Fifth Circuit's decision.¹⁸ On January 19, 2016, the Supreme Court granted certiorari (meaning, it agreed to take the case),¹⁹ and it heard oral arguments on April 18, 2016. On June 23, 2016 the Supreme Court issued a 4-4 decision in *United States v. Texas*, which has the effect of upholding the Fifth Circuit's decision.

At the center of these cases is a policy dispute—Texas, 25 other states, and an Arizona sheriff disagree with the President's policy on how the immigration agencies should use their limited enforcement resources. These cases are more political diatribe than legal argument, and many previous Administrations have used their executive authority in similar ways.²⁰ Understanding the procedural steps and the nature of the arguments helps to *Texas v U.S.* in perspective.

The States' Lawsuit

Texas and 25 states seek to "enjoin," meaning to permanently block implementation of, DAPA and expanded DACA. They argue that the executive actions violate the "Take Care" clause of the Constitution because the President has allegedly changed the law rather than "tak[ing] care that the laws be faithfully executed."²¹ Initially, both lawsuits sought a "preliminary injunction"—a temporary block during the life of the lawsuit—which is an "extraordinary remedy."²² To grant a "preliminary injunction," the court must find that four factors exist—(1) the challenger is likely to succeed on the merits, (2) the challenger is likely to suffer "irreparable harm" without the injunction, (3) the "balance of equities" supports the challenger, and (4) an injunction is in the "public interest."²³

The states' complaint argued that expanded DACA and DAPA will trigger a "wave" of immigration—even larger than the alleged "flood" of Central American families to the United States caused by DACA²⁴ (ignoring the substantial evidence that fear of persecution and violence is driving Central Americans from their homes).²⁵ The states also alleged that this wave will "increase human trafficking" by drug cartels and thus "exacerbate the risks and dangers imposed on [states] by organized crime."²⁶ In addition, the states alleged broader harms from the expenditures on law enforcement, health care, education, processing professional licenses, and other benefits.²⁷

Preliminary Injunction in States' Lawsuit

On February 16, 2015, Brownsville, Texas federal judge Andrew Hanen, of the U.S. District Court for the Southern District of Texas, temporarily enjoined DAPA and the planned expansion of DACA pending a higher court's contrary order or a trial on the merits.²⁸ Highlights of the court's reasoning include:

1. Texas has standing to bring this lawsuit because DAPA and expanded DACA will create a new class of individuals eligible to apply for state-subsidized driver's licenses, which would impose additional processing and issuance costs on the state.²⁹ The court did not address the offsetting economic benefits that states also would realize from DAPA and expanded DACA, including higher wages, increased tax revenue, and new jobs.³⁰ The court rejected other standing arguments by the plaintiffs, namely, that DAPA would impose indirect costs on states such as for public education and uncompensated medical care.³¹
2. Judge Hanen based his ruling on narrow procedural grounds—that the Government did not comply with certain technical requirements under the Administrative Procedure Act (APA), including notice-and-comment rulemaking.³²

In reaching this conclusion, Judge Hanen found DAPA and expanded DACA to be substantive rules subject to notice-and-comment procedures, rather than general statements of policy, which would not require such procedures.³³ However, as DHS pointed out, the expanded DACA and DAPA initiatives are policies, under which DHS must decide on a case-by-case basis whether to grant a particular individual's request.³⁴ DHS national procedures for officers reviewing DACA claims specifically allow discretionary denials, which are consistent with a general statement of policy. The procedures provide a form with a box permitting denials solely on the basis of discretion—even where eligibility guidelines are met, as well as another box permitting denial where a requestor “do[es] not warrant a favorable exercise of prosecutorial discretion because of national security or public safety concerns.”³⁵ Notably:

1. The ruling did not address the constitutionality of President Obama's initiatives. Indeed, the decision affirmed the Secretary of Homeland Security's authority to set the Department's enforcement priorities and to marshal its resources accordingly.³⁶
2. The court explicitly did not enjoin original DACA.³⁷ DHS reinforced this point, recalling that “individuals may continue to come forward and request initial grant of DACA or renewal of DACA pursuant to the guidelines established in 2012.”³⁸
3. Regarding the public interest, the court found the cost of issuing drivers' licenses and other benefits to prospective deferred action beneficiaries to be decisive.³⁹ This is contrary to evidence that President Obama's policy helps, not harms, the public interest, as an [amicus brief](#) by the American Immigration Council and others argued.⁴⁰ Conversely, halting President Obama's policy will harm the economy and affected individuals, who have significant ties in the United States.⁴¹

Fifth Circuit Appeal in States' Lawsuit

The government subsequently appealed the lower court's decision granting the preliminary injunction to the higher federal court, the Fifth Circuit Court of Appeals.⁴² In addition, the government asked Judge Hanen to "stay" the injunction (i.e., stop the injunction from being in effect),⁴³ and then made the same request—on an emergency basis—to the Fifth Circuit when Judge Hanen did not rule promptly.⁴⁴

A broad spectrum of states, municipalities, law enforcement agencies, legislators, and other organizations supported the federal government's appeal with "friend of the court" or *amici* briefs. These *amici* include 15 states and the District of Columbia,⁴⁵ 73 U.S. mayors and county officials (led by New York, Los Angeles, Chicago, and Houston),⁴⁶ over 30 heads of local law enforcement agencies,⁴⁷ 181 U.S. Representatives,⁴⁸ four U.S. Senators,⁴⁹ over 150 civil rights, labor, and immigrants' rights groups,⁵⁰ 19 faith organizations,⁵¹ organizations representing educators and children's advocates,⁵² and businesses and trade associations.⁵³ The cities supporting the President's initiatives contain more undocumented immigrants than the states opposing them.⁵⁴

On May 26, 2015, a divided panel of the Fifth Circuit Court of Appeals [denied](#) the request for an emergency stay of the preliminary injunction, with the result that the hold on implementation of DAPA and expanded DACA remained in place while the Fifth Circuit considered the appeal of the preliminary injunction itself.⁵⁵

On November 9, 2015, a divided panel of the Fifth Circuit Court of Appeals upheld the district court's order granting the preliminary injunction.⁵⁶ The majority accepted the lower court's findings that Texas has standing to bring this lawsuit based on the additional costs it would incur to issue driver's licenses to beneficiaries of expanded DACA and DAPA.⁵⁷ The court acknowledged that judicial review is unavailable under the APA where a matter is committed to agency discretion and that the government's immigration enforcement priorities fall squarely within this category; nonetheless, the majority also found that the plaintiff states were likely to prevail on their claim that the federal government should have pursued notice-and-comment rulemaking because DAPA and expanded DACA determinations are non-discretionary.⁵⁸ In addition, the majority held that the new deferred action initiatives are arbitrary and capricious because the federal government did not have authority to promulgate them under the Immigration and Nationality Act.⁵⁹ The Court also granted a motion by the Mexican American Legal Defense and Education Fund (MALDEF) to intervene in the case on behalf of three mothers who wish to apply for DAPA once it is implemented. Allowing MALDEF to intervene means the mothers can participate as parties in the case, with all of the rights of parties, including briefing and argument.⁶⁰

In her dissenting opinion, Judge Carolyn D. King characterized the majority's opinion as a "mistake" that "has been exacerbated by the extended delay that has occurred in deciding this 'expedited' appeal."⁶¹

States' Case at Supreme Court

On January 19, 2016, the Supreme Court announced it would review the Fifth Circuit's decision.⁶² A broad range of organizations and community leaders filed amicus briefs with the Supreme Court in support of the federal government, demonstrating the far-reaching impact of this case.⁶³ Together, the amici made a strong

argument that expanded DACA and DAPA are good for families, public safety and the American economy.⁶⁴ The amici included faith-based groups, business owners, law enforcement officials, educators, former Homeland Security officials, and current and former members of Congress.⁶⁵ Furthermore, 115 mayors, county executives, and localities, as well as 16 states and the District of Columbia, filed briefs in support of the government's position.⁶⁶

On April 18 the Supreme Court heard 90 minutes of oral argument. The argument itself focused primarily on the issue of standing, or legal capacity, to file the lawsuit.⁶⁷ Although the U.S. Solicitor General and the Texas Solicitor General (on behalf of all 26 states) argued for the bulk of the time, the Court also allowed the U.S. House of Representatives, which filed an amicus brief in support of the states, and intervenor MALDEF (on behalf of the intervenors) to argue as well.⁶⁸

On June 23, 2016, the Supreme Court issued a 4-4 decision in *United States v. Texas*.⁶⁹ In a nine-word opinion, the Supreme Court refused to resolve any of the questions it had agreed to consider in the case.⁷⁰ Instead, because the Court could not reach a majority, the Fifth Circuit's decision remains in place. Importantly, the Court neither rebuked nor affirmed the President's authority to exercise executive action. Because it is a split decision, the Court's opinion has no precedential value. The decision also does not impact the original DACA program launched in 2012.

Judge Hanen Issues Order Relating to Three-Year Work Permit Confusion

Meanwhile, on May 19, 2016, Judge Andrew Hanen issued a highly extraordinary order instructing the DOJ to turn over personal information of about 50,000 DACA recipients who received three-year reprieves from deportation and three-year work permits.⁷¹ This order stems from previous hearings where Judge Hanen threatened DOJ attorneys with sanctions for allegedly "misleading" him about the government's implementation of expanded DACA and DAPA, in accordance with a November 20, 2014 memo.⁷² In addition to setting forth eligibility requirements for expanded DACA and DAPA, the memo announced that the government would begin issuing deferrals of deportation and work permits for three years instead of two, even for those who applied under the original 2012 DACA initiative.

Judge Hanen claims DOJ misled him when, with respect to implementation of expanded DACA and DAPA, its lawyers stated early in the litigation that they "really would not expect anything between now and the date of the hearing."⁷³ DOJ asserts that its lawyers merely misunderstood what Judge Hanen was asking.⁷⁴ The focus of *Texas v. United States* was on the proposed new initiatives—expanded DACA and DAPA—not on original DACA. Further, DOJ noted in a brief that if it had been trying to hide this change from two to three-year increments, the agency did a bad job considering it was posted on the Department of Homeland Security's website.⁷⁵

Unconvinced by these arguments, Judge Hanen issued an order imposing two sets of sanctions on May 19, 2016.⁷⁶ First, hundreds of DOJ attorneys involved in this case must take an in-person ethics course. Second, DOJ must turn over the names and addresses, among other personal information, of the 50,000 DACA

beneficiaries who received benefits for a three-year period. On May 31, 2016, DOJ filed a motion to stay, or halt, Judge Hanen’s order. On June 7, 2016, Judge Hanen stayed his order until a hearing on August 22, 2016.⁷⁷

In the coming weeks, the parties will make decisions about whether to seek rehearing at the Supreme Court or pursue other legal avenues. The case may ultimately go back to the district court for a hearing on the merits of the case. Whatever happens, there still is much more work to be done. Although expanded DACA and DAPA are important steps toward meaningful reform, they are only temporary measures at best. The only way to ensure lasting improvements is for Congress to pass long-overdue immigration reform legislation.

Endnotes

¹ *United States v. Texas*, No. 15-674, (U.S. June 23, 2016).

² American Immigration Council, *A Guide to the Immigration Accountability Executive Action* (November 2014), at <http://www.immigrationpolicy.org/special-reports/guide-immigration-accountability-executive-action>.

³ U.S. Department of Homeland Security Secretary Jeh Charles Johnson, *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents* (November 20, 2014), at http://www.dhs.gov/sites/default/files/publications/14_1120_memo_deferred_action.pdf.

⁴ American Immigration Council, *Only the Beginning: The Economic Potential of Executive Action on Immigration* (December 2014), at http://www.immigrationpolicy.org/sites/default/files/docs/only_the_beginning-economic_potential_of_executive_action_final.pdf.

⁵ Hiroshi Motomura, *The President’s Discretion, Immigration Enforcement, and the Rule of Law* (August 2014), at <http://www.immigrationpolicy.org/perspectives/president%E2%80%99s-discretion-immigration-enforcement-and-rule-law>.

⁶ *Arpaio v. Obama, et al.*, No. 14-cv-1966 (D.D.C.).

⁷ *Texas, et al. v. United States, et al.*, No. 14-cv-254 (S.D. Tex.).

⁸ The 24 states’ amended complaint, filed December 9, 2014, is available at <https://www.texasattorneygeneral.gov/files/epress/files/ImmigrationStatesFirstAmendedLawsuit12092014.pdf> (hereinafter “States’ Amended Complaint”). Those states are Texas, Alabama, Arizona, Arkansas, Florida, Georgia, Idaho (and the Idaho Governor), Indiana, Kansas, Louisiana, Montana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Utah, West Virginia, and Wisconsin, as well as Michigan’s attorney general and the Governors of Mississippi, Maine, and North Carolina. Additionally, two more states—Tennessee and Nevada—joined the lawsuit. Associated Press, *2 more states join Texas-led immigration lawsuit* (Jan. 26, 2015), at http://hosted.ap.org/dynamic/stories/T/TX_IMMIGRATION_LAWSUIT_TNOL?SITE=TNSHE&SECTION=STATE&TEMPLATE=DEFAULT.

17 states initially filed the first complaint on December 3 (all but Arizona, Florida, Arkansas, Michigan’s attorney general, North Dakota, Ohio, and Oklahoma).

⁹ *Texas, et al. v. United States, et al.*, No. 14-cv-254, Dkt #81 (S.D. Tex. Jan. 12, 2015) (hereinafter “States’ District Court Amicus”), available at <http://www.atg.wa.gov/uploadedFiles/TexasvUSAmicusBr.pdf>. All states but Delaware, Rhode Island, and Virginia also signed the district court *amicus* brief. See also Brief of the Amicus States of Washington, California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maryland, Massachusetts, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and the District of Columbia in Support of the United States, *Texas, et al. v. United States, et al.*, No. 15-40238 (5th Cir. Apr. 6, 2015) (hereinafter “States’ Appeals Court Amicus”), available at http://www.legalactioncenter.org/sites/default/files/docs/lac/5th%20Cir%20Imm%20Amicus_Attorneys%20General.pdf.

¹⁰ Brief for the Appellants, *Texas, et al. v. United States, et al.*, No. 15-40238 (5th Cir. March 30, 2015) (hereinafter “Gov’t Appeal Brief,” available at http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/30/immigration_ca5_us_pi_brief.pdf; Defendants’ Memorandum of Points and Authorities in Opposition to Plaintiffs’ Motion for Preliminary Injunction, *Texas, et al. v. United States, et al.*, No. 14-cv-254, Dkt #38 (S.D. Tex. Dec. 24, 2014) (hereinafter “Gov’t District Court Opp.”), available at <http://www.scribd.com/doc/252049849/Texas-v-United-States-Response-of-United-States-Defendants-Sur-Reply-in-Opposition-to-Plaintiffs-Motion-for-Preliminary-Injunction>, *Texas, et al. v. United States, et al.*, No. 14-cv-254, Dkt #38 (S.D. Tex. Jan. 30, 2015) (hereinafter “Gov’t District Court Sur-Reply”), available at <http://www.scribd.com/doc/254323502/Texas-v-United-States-Government-Surreply#scribd>.

¹¹ See Brief of Immigration Law Professors as Amici Curiae in Support of Reversal, *Texas, et al. v. United States, et al.*, No. 15-40238 (5th Cir. Apr. 6, 2015), available at <http://lawprofessors.typepad.com/files/immigration-law-professors-brief-filed.pdf>; Lynne Rambo, *States' Lawsuit Against Executive Action More Politics Than Substance*, Immigration Impact (Jan. 13, 2015) (summarizing standing arguments), available at <http://immigrationimpact.com/2015/01/13/states-lawsuit-against-executive-action-more-politics-than-substance/#sthash.d8AEPKv6.dpuf>.

¹² *Arpaio v. Obama, et al.*, No. 14-cv-1966, Dkt #23, 2014 WL 7278815 (D.D.C. Dec. 23, 2014) (hereinafter "Arpaio Opinion"), available at https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2014cv1966-23.

¹³ *Arpaio v. Obama, et al.*, No. 14-5325, (D.C. Cir. 2015), available at [https://www.cadc.uscourts.gov/internet/opinions.nsf/D4C4C6269EE9758585257EA10052EE62/\\$file/14-5325-1567834.pdf](https://www.cadc.uscourts.gov/internet/opinions.nsf/D4C4C6269EE9758585257EA10052EE62/$file/14-5325-1567834.pdf). Judge Brown wrote a concurring opinion; *Arpaio v. Obama, et al.*, No. 14-5325, (D.C. Cir. 2015), *petition for cert. filed*, (Nov. 12, 2015) (No. 15-643) available at <http://www.freedomwatchusa.org/pdf/151112-PetitionWritCertiorariArpaiovObamaUSSC.pdf>.

¹⁴ *Arpaio v. Obama, et al.*, No. 14-5325, (D.C. Cir. 2015), *cert denied*, (U.S. Jan. 19, 2016) (No. 15-643), available at http://www.supremecourt.gov/orders/courtorders/011916zor_l5gm.pdf.

¹⁵ *Texas, et al. v. United States, et al.*, No. 14-cv-254, Dkt #145 (S.D. Tex. Feb. 16, 2015) (hereinafter "Hanan Opinion"), at http://www.txs.uscourts.gov/notablecases/1-14-cv-254_145X20977588_0.pdf.

¹⁶ Defendants' Notice of Appeal, *Texas, et al. v. United States, et al.*, No. 14-cv-254, Dkt #149 (S.D. Tex. Feb. 23, 2015), at <http://www.scribd.com/doc/256670421/Texas-v-United-States-Notice-of-Appeal>.

¹⁷ *Texas v. United States*, No. 15-40238, (5th Cir. Tex. Nov. 9, 2015) available at <http://www.ca5.uscourts.gov/opinions/pub/15/15-40238-CV0.pdf>

¹⁸ Ariane de Vogue, *Obama Administration Wants Supreme Court to Approve its Immigration Plans*, CNN, (Nov. 10, 2015), available at <http://www.cnn.com/2015/11/09/politics/obama-immigration-appeals-court-ruling/>.

¹⁹ Joshua Gerstein, *Supreme Court to Rule on Obama's Immigration Orders*, Politico, (Jan. 19, 2016), available at <http://www.politico.com/story/2016/01/supreme-court-to-rule-on-obama-immigration-orders-217860>; *Texas v. United States*, No. 15-40238, (5th Cir. Tex. Nov. 9, 2015), *cert. granted*, (U.S. January 19, 2016) (No. 15-674), available at http://www.supremecourt.gov/orders/courtorders/011916zor_l5gm.pdf.

²⁰ American Immigration Council, *Executive Grants of Temporary Immigration Relief, 1956-Present*, (October 2014), at <http://www.immigrationpolicy.org/just-facts/executive-grants-temporary-immigration-relief-1956-present>.

²¹ U.S. Const., Art. II, § 3.

²² *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 22 (2008).

²³ See Arpaio Opinion, note 12, at 20.

²⁴ See States' Amended Complaint, note 8, at ¶¶ 31-43.

²⁵ American Immigration Council, *Children in Danger: A Guide to the Humanitarian Crisis at the Border* (July 2014), p. 2, at http://www.immigrationpolicy.org/sites/default/files/docs/children_in_danger_a_guide_to_the_humanitarian_challenge_at_the_border_final.pdf; Elizabeth Kennedy, *No Childhood Here: Why Central American Children are Fleeing Their Homes* (July 2014), at http://www.immigrationpolicy.org/sites/default/files/docs/no_childhood_here_why_central_american_children_are_fleeing_their_homes_final.pdf.

²⁶ States' Amended Complaint, note 8, at ¶ 63.

²⁷ *Id.*, ¶¶ 64-68.

²⁸ See Hanan Opinion, note 7.

²⁹ *Id.* at 22-27; see also Plaintiffs' Reply In Support of Motion for Preliminary Injunction, *Texas, et al. v. United States et al.*, No. 1:14-cv-254, Dkt #64 (S.D. Tex. Jan. 7, 2015) (on file with American Immigration Council).

³⁰ See Gov't District Court Sur-Reply, note 17, at p. 10; States' District Court Amicus, note 7, at pp. 5-7, 12-13; *Amici Curiae* Brief of American Immigration Council, American Immigration Lawyers Association, Define American, National Immigrant Justice Center, National Immigration Law Center, New Orleans Workers' Center For Racial Justice, Service Employees International Union, Southern Poverty Law Center, and United We Dream in Opposition to Plaintiffs' Motion for Preliminary Injunction, *Texas, et al. v. United States, et al.*, No. 14-cv-254, Dkt #39 (S.D. Tex. Dec. 29, 2014) (hereinafter "Council District Court Amicus"), pp. 3-6, at <http://www.legalactioncenter.org/sites/default/files/Texas%20v.%20US%20amicus%20brief.pdf>.

³¹ Hanan Opinion, note 7, at pp. 43-56.

³² *Id.* at pp. 81-87, *citing* 5 USC § 701(a)(2); see also pp. 102-112.

³³ *Id.* at pp. 102-112.

³⁴ Gov't District Court Sur-Reply, note 17, at pp. 39-43; Council District Court Amicus, note 48, at pp. 1-2.

³⁵ Council District Court Amicus, note 8, at p. 2, citing U.S. DHS, *National Standard Operating Procedures (SOP), Deferred Action for Childhood Arrivals (DACA), (Form I-821D and Form I-765)* (Apr. 4, 2013), Appendix F, p. 249, at <http://legalactioncenter.org/sites/default/files/DACA%20Standard%20Operating%20Procedures.pdf>; see also Declaration of Donald W. Neufeld, *Texas, et al. v. United States, et al.*, No. 14-cv-254, (S.D. Tex. Jan. 30, 2015), ¶¶ 10-24, at <https://ecf.txsd.uscourts.gov/doc1/179122474614>.

³⁶ Hanen Opinion, note 7, at p. 70, 123.

³⁷ Hanen Opinion, note 7, at p. 5, p. 123.

³⁸ U.S. DHS, *Statement by Secretary Jeh C. Johnson Concerning the District Court's Ruling Concerning DAPA and DACA* (Feb. 17, 2015), at <http://www.dhs.gov/news/2015/02/17/statement-secretary-jeh-c-johnson-concerning-district-courts-ruling-concerning-dapa>.

³⁹ Hanen Opinion, note 21, at pp. 22-32.

⁴⁰ Council District Court Amicus, note 48, at pp. 3-8.

⁴¹ *Id.* at pp. 9-15.

⁴² Defendants' Notice of Appeal, *Texas, et al. v. United States, et al.*, No. 14-cv-254, Dkt #149 (S.D. Tex. Feb. 23, 2015), at <http://www.scribd.com/doc/256670421/Texas-v-United-States-Notice-of-Appeal>.

⁴³ Defendants' Emergency Expedited Motion to Stay the Court's February 16, 2015 Order Pending Appeal and Supporting Memorandum, *Texas, et al. v. United States, et al.*, No. 1:14-cv-254 (S.D. Tex. Feb. 23, 2015), available at <http://immigrationimpact.com/wp-content/uploads/2015/02/150-Ds-Emergency-Expedited-Motion-to-Stay-the-Courts-February-16-2015-Order-Pending-Appeal-and-Supporting-Memorandum.pdf>. The government indicated that if the district court did not rule by a date certain (Feb. 25, 2015), it might seek relief from the Fifth Circuit. *Id.* at p. 3. After three weeks had passed and Judge Hanen had not ruled, the government turned to the appellate court, seeking the same relief it sought from Judge Hanen; namely, an emergency stay, or, alternatively, limitation of the injunction only to Texas or only to the states suing the government. Gov't Appeal Brief at pp. 54-56.

⁴⁴ Appellants' Emergency Motion for Stay Pending Appeal, *Texas, et al. v. United States, et al.*, No. 15-40238 (5th Cir. Mar. 12, 2015), available at <http://crimmigration.com/wp-content/uploads/2015/03/03-12-2015-stay-mx-5th-cir.pdf>; see also Wendy Feliz, *DOJ Files Emergency Appeal In Immigration Executive Action Case*, Immigration Impact (Mar. 12, 2015), at <http://immigrationimpact.com/2015/03/12/doj-files-emergency-appeal-in-immigration-executive-action-case/>.

⁴⁵ Brief of the Amicus States of Washington, California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maryland, Massachusetts, New Mexico, New York, Oregon, Rhode Island, Vermont, Virginia, and the District of Columbia in Support of the United States, *Texas, et al. v. United States, et al.*, No. 15-40238 (5th Cir. Apr. 6, 2015) (hereinafter "States' Appeals Court Amicus"), available at <http://www.legalactioncenter.org/sites/default/files/docs/lac/5th%20Cir%20Imm%20Amicus%20Attorneys%20General.pdf>. See also *Texas, et al. v. United States, et al.*, No. 14-cv-254, Dkt #81 (S.D. Tex. Jan. 12, 2015) (hereinafter "States' District Court Amicus"), available at <http://www.atg.wa.gov/uploadedFiles/TexasvUSAmicusBr.pdf>. All states but Delaware, Rhode Island, and Virginia also signed the district court *amicus* brief.

⁴⁷ Amicus Curiae Brief of Major Cities Chiefs Association, Police Executive Research Forum, and Individual Sheriffs and Police Chiefs in Support of Defendants-Appellants, *Texas, et al. v. United States, et al.*, No. 15-40238 (5th Cir. Apr. 6, 2015), available at www.nilc.org/document.html?id=1228. Twenty-seven of these law enforcement leaders, and the organizations, also filed a brief in the district court. See *Amici Curiae* Brief of Major Cities Chiefs Association, Police Executive Research Forum, and Individual Sheriffs and Police Chiefs in Opposition to Plaintiffs' Motion for Preliminary Injunction, *Texas, et al. v. United States, et al.*, No. 14-cv-254, Dkt #83 (S.D. Tex. Jan. 12, 2015), available at <http://archive.azcentral.com/ic/news/Law-Enforcement-Amicus-2015-01-12.pdf>.

⁴⁸ Brief for 181 Members of the United States House of Representatives as Amici Curiae in Support of Defendants-Appellants, *Texas, et al. v. United States, et al.*, No. 15-40238 (5th Cir. Apr. 6, 2015), available at <http://www.democraticleader.gov/newsroom/181-house-members-file-amicus-brief-in-court-to-support-president-obamas-immigration-executive-actions/>. All but 12 House Democrats signed the brief. See Cristina Marcos, *Dems: Immigration actions are legal*, The Hill (Apr. 6, 2015), at <http://thehill.com/blogs/blog-briefing-room/news/238012-house-dems-side-with-obama-in-immigration-court-case>.

⁴⁹ Brief of Amici Curiae Members of United States Senate in Support of Defendants-Appellants, *Texas, et al. v. United States, et al.*, No. 15-40238 (5th Cir. Apr. 6, 2015), available at www.nilc.org/document.html?id=1226. The four Senators were Senator Richard Blumenthal, Senator Christopher A. Coons, Senator Mazie Hirono, and Senator Sheldon Whitehouse.

⁵⁰ Amici Curiae Brief of American Immigration Council, National Immigration Law Center, Service Employees International Union and Others in Support of Appellant United States Seeking Reversal Of Preliminary Injunction, *Texas, et al. v. United States, et al.*, No. 15-40238 (5th Cir. Apr. 6, 2015) (hereinafter “Council Appeals Court Amicus”), available at http://www.legalactioncenter.org/sites/default/files/docs/lac/5th%20Cir%20Imm%20Amicus_final.pdf.

⁵¹ Brief of Faith-Based Organizations as Amici Curiae in Support of Appellants on the Public Interest Issue and Supporting Reversal, *Texas, et al. v. United States, et al.*, No. 15-40238 (5th Cir. Apr. 6, 2015), available at <http://www.interfaithimmigration.org/wp-content/uploads/2015/04/Faith-Amicus-Brief.pdf>.

⁵² Brief of Educators and Children’s Advocates as Amici Curiae in Support of Defendants-Appellants, *Texas, et al. v. United States, et al.*, No. 15-40238 (5th Cir. Apr. 6, 2015), available at www.nilc.org/document.html?id=1230. The organizations are the American Federation of Teachers, First Focus, the National Education Association, ASPIRA, Educators for Fair Consideration, The Hispanic Association of Colleges and Universities, Pomona College, and the Scholarship Foundation of St. Louis.

⁵³ Brief for Amici Curiae Businesses in Support of Respondents-Appellants and in Support of Reversal, *Texas, et al. v. United States, et al.*, No. 15-40238 (5th Cir. Apr. 6, 2015), available at www.nilc.org/document.html?id=1231. The businesses and associations are American Apparel, Inc., Capital City Fruit, Inc., Farmers Investment Co., Latin-American Chamber of Commerce of Utah, Marek Brothers Construction, Inc., New Solutions Group, LLC, and the Nisei Farmers League.

⁵⁵ *Texas v. United States*, No. 15-40238, 2015 U.S. App. LEXIS 8657 (5th Cir. May 26, 2015) available at <http://wfc2.wiredforchange.com/dia/track.jsp?v=2&c=p5rvXqyZ8SErMkbXZVzYR%2BeKfJrgA%2Bmh>.

⁵⁶ *Texas v. United States*, No. 15-40238, (5th Cir. Tex. Nov. 9, 2015) available at, <http://www.ca5.uscourts.gov/opinions/pub/15/15-40238-CV0.pdf>.

⁵⁷ *Id.* at 19.

⁵⁸ *Id.* at 30-44.

⁵⁹ *Id.* at 54-66.

⁶⁰ Order of Intervention, *Texas, et al. v. United States, et al. v. Jane Doe #1 et al.*, No. 15-40333 (5th Cir. November 9, 2015), available at, <http://www.ca5.uscourts.gov/opinions/pub/15/15-40333-CV0.pdf>.

⁶¹ *Id.* at 124.

⁶² *Texas v. United States*, No. 15-40238, (5th Cir. Tex. Nov. 9, 2015), cert. granted, (U.S. January 19, 2016) (No. 15-674), available at, http://www.supremecourt.gov/orders/courtorders/011916zor_l5gm.pdf.

⁶³ Briefs for Amici Curiae in Support of Petitioners, *United States v. Texas et al.*, No. 15-674 (U.S., March 28, 2016), available at <https://www.fightforfamilies.org/press-and-resources/#legalResources>.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ Transcript of Oral Argument, *U.S. v Texas et al.*, No. 15-674, (U.S., April 18, 2016), available at, http://www.supremecourt.gov/oral_arguments/argument_transcripts/15-674_h3dj.pdf.

⁶⁸ Brief for the Amici Curiae The United States House of Representatives in Support of Respondents, *United States v. Texas et al.*, No. 15-674 (U.S., April 4, 2016), available at <http://www.scotusblog.com/wp-content/uploads/2016/04/AmicusBrief.pdf>.

⁶⁹ *United States v. Texas*, No. 15-674, (U.S. June 23, 2016).

⁷⁰ *Id.*

⁷¹ Memorandum Opinion and Order, *Texas, et al. v. United States, et al.*, No. 14-cv-254 (S.D. Tex. May 19, 2016), available at, <http://www.scotusblog.com/wp-content/uploads/2016/05/Judge-Hanen-ethics-ruling-5-19-16.pdf> (hereinafter “Hanen Order”).

⁷² FoxNews.com, ‘*Like an idiot I believed that: Judge blasts DOJ over immigration claims, threatens sanctions*, (March 20, 2015), available at, <http://www.foxnews.com/politics/2015/03/20/judge-sanctions-possible-in-obama-immigration-court-case.html>.

⁷³ Hanen Order, note 75, at 16.

⁷⁴ Defendants’ Response to the Court’s Order of April 7, 2015, *Texas, et al. v. United States, et al.*, No. 14-cv-254, Dkt #38 (S.D. Tex. April 20, 2015) available at <http://cdn.thinkprogress.org/wp-content/uploads/2016/05/19222348/brief-to-hanen.pdf>.

⁷⁵ *Id.*

⁷⁶ Defendants' Motion to Stay May 19, 2016 Order Pending Further Review, *Texas, et al. v. United States, et al.*, No. 14-cv-254, Dkt #38 (S.D. Tex. May 31, 2016) available at <http://www.politico.com/f/?id=00000155-0777-d4d4-a3dd-1ffff6320002>.

⁷⁷ Order, *Texas, et al. v. United States, et al.*, No. 14-cv-254 (S.D. Tex. June 7, 2016), available at, <http://www.scotusblog.com/wp-content/uploads/2016/06/Hanen-order-on-stay-6-7-16.pdf>.